

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:
CERVECERIA MODELO, S.A. DE C.V. and	:
MARCAS MODELO, S.A. DE C.V.,	:
	:
Plaintiffs,	:
	:
-against-	:
	:
USPA ACCESSORIES LLC d/b/a CONCEPT ONE	:
ACCESSORIES,	:
	:
Defendants.	:
	:
-----X	

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION  
TO EXCLUDE DEFENDANT'S EXPERT WITNESS BETH SCHLANSKY**

Pursuant to Rule 702 of the Federal Rules of Evidence, Plaintiffs Cerveceria Modelo, S.A. de C.V. and Marcas Modelo, S.A. de C.V. hereby move to preclude any expert testimony at trial based on the August 18, 2008 report by Beth Schlansky (the "Schlansky Report")<sup>1</sup>, defendant Concept One's expert witness on licensing.

Ms. Schlansky is a licensing consultant who was retained by the defendant to testify regarding her opinions on the quality of the defendant's products and on Marcas Modelo's approval and licensing procedures. Ms. Schlansky should be excluded from testifying at trial for the following reasons:

- she did not utilize any objective methodology or reasoning to reach her conclusions, but merely stated subjective opinions;
- the defendant and its counsel had substantial input into her work and conclusions, offering only selective information that skewed her findings; and

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<sup>1</sup> A copy of the Schlansky Report is attached as Exhibit A.

- she drew inappropriate legal conclusions.

Federal Rule of Evidence 702 specifies that expert witness testimony is only admissible if (i) the testimony is based upon sufficient facts or data; (ii) the testimony is a product of reliable principles and methods; and (iii) the [expert] witness has applied the principles and methods reliably to the facts of the case. Fed. R. Evid. 702.; *see also Daubert*, 590 U.S. at 590-95. When faced with a proffer of expert testimony, the court performs a “gate-keeping” function to ascertain whether the testimony aids the trier of fact, rests on a reliable foundation, and is relevant to the facts of the case. *See Lava Trading Inc. v. Hartford Fire Ins. Co.*, No. 03 Civ. 7037(PKC), 2005 WL 4684238, at \*9-10 (S.D.N.Y. Apr. 11, 2005), citing *Daubert*, 509 U.S. at 589-93. Even if the expert’s methods and theories are not “purely scientific,” as in the case here, “the court should follow the same approach, adapting the *Daubert* criteria as needed for the purpose of assessing reliability.” *Lava Trading*, at \*9, citing *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 150 (1999). In addition, it is well settled that “experts may not invade the court’s province by testifying on issues of law.” *LinkCo, Inc. v. Fujitsu Ltd.*, 2002 WL 1585551, \*1 (S.D.N.Y. 2002).

**A. Ms. Schlansky Failed To Use Any Objective Reasoning Or Methodology**

Ms. Schlansky did not conduct any objective research that is capable of being checked or reproduced. Specifically, Ms. Schlansky visited Concept One’s showroom and apparently reviewed a number of items that Concept One selected for her review in a conference room (Schlansky Dep. p. 45).<sup>2</sup> Ms. Schlansky simply looked at the products and did nothing else (Schlansky Dep. p. 46). She did not make any notes or prepare a written summary of what products she examined or what she did (Schlansky Dep. p. 45). She merely concluded verbally

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<sup>2</sup> References to “Schlansky Dep.” refer to the deposition of Beth Schlansky taken on August 21, 2008. The referenced pages from the rough transcript are attached as Exhibit B.

to the defendant and its counsel that the products were of “good quality” and “excellent styling” (Schlansky Dep. p. 47), and that the products “looked great” (Schlansky Dep. p. 76). *See also* Schlansky Report ¶ Q.

Ms. Schlansky confirmed that she did not conduct any objective research. For example, she did not conduct a blind study to have others examine the products without knowing the purpose of the examination:

Q: But you didn’t utilize any neutral people who had no idea of what the purpose was of the inspection to go look at the products and then report to you, is that correct?

A: No, I did not.

Indeed, she did no research whatsoever. (Schlansky Dep. pp. 169-170). Rule 702 requires that an expert’s testimony rest on “knowledge,” a term that “connotes more than subjective belief or unsupported speculation.” *In re Rezulin Products Liab. Litig.*, 309 F. Supp. 2d 531, 543 (S.D.N.Y. 2004) (holding inadmissible expert testimony based on “personal, subjective views”). The Schlansky Report, void of any discernable foundation in research or reasoning, therefore stands as an unsubstantiated set of speculative and conclusory assertions. Such unreliable testimony would unfairly mislead the jury and unduly prejudice plaintiffs and therefore should not be admitted.<sup>3</sup>

#### **B. Ms. Schlansky Relied On Incomplete Facts Provided By Defense Counsel**

In the expert report, Ms. Schlansky focuses on the period January 1 through March 23, 2007 in providing her opinions on Marcas Modelo’s approval procedures, and she states that Concept One had not received any approvals through this date. The March 23, 2007 date was

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<sup>3</sup> The objectivity of Ms. Schlansky’s conclusions is brought into further question by the fact that she has worked with Concept One as a licensing consultant for a major national retailer (Schlansky Dep. pp. 12-14, 43).

selected and given to Ms. Schlansky by her trial lawyer (Schlansky Dep. p. 164). The lawyer did not explain to Ms. Schlansky why he selected that date nor did Ms. Schlansky ask counsel why that date was selected as the cut-off (Schlansky Dep. p. 165). It appears that the date was selected to suit counsel's arguments, since during the next week on March 28, 2007, Concept One had received a number of approvals from Marcas Modelo. *See* Trial Exhibit D-Q (Attached as Exhibit C). Moreover, Ms. Schlansky confirmed that defendant's trial lawyer had input into the report and that she received comments from him on a number of occasions and, in some instances, made changes to the report based on counsel's comments (Schlansky Dep. pp. 72-73).

An expert should not rely solely on the unsupported representations of his client. *See Lava Trading Inc. v. Hartford Fire Ins. Co.*, No. 03 Civ. 7037(PKC), 2005 WL 4684238 (S.D.N.Y. Apr. 11, 2005); *see also King v. Brandtjen & Kluge, Inc.*, No. 94-cv-411(M), 2001 WL 1804345 (W.D.N.Y. 2001) (precluding expert testimony as unreliable in part because the expert "blindly endorses" the plaintiff's version of the facts.) Here, Ms. Schlansky has blindly endorsed defendant's rendition of the facts without any independent investigation or analysis. Ms. Schlansky's selective knowledge of the facts renders her report unreliable, confusing, and inadmissible.

**C. Ms. Schlansky Has No Legal Training Yet Her Report Draws Legal Conclusions**

Ms. Schlansky is not a lawyer and has no legal training in contract law or contract interpretation (Schlansky Dep. p. 57). Even if Ms. Schlansky was a lawyer or had legal training, it would be improper for her to invade the Court's province by testifying on issues of law. *LinkCo., Inc. v. Fujitsu Ltd.*, 2002 WL 1585551, \*1 (S.D.N.Y. 2002). However, Ms. Schlansky purports to proffer legal opinions on whether Marcas Modelo allegedly violated the license agreement:

The failure to approve a 2007 design on the basis that it may be sold in 2008 pursuant to the contract's sell-off period is in direct violation of the terms of Concept One's license agreement with the licensor of the Corona brand.

(Schlansky Report ¶ T)

While "an expert may provide an opinion to help a jury or a judge understand a particular fact, he may not give testimony stating ultimate legal conclusions based on those facts." *LinkCo, Inc.*, 2002 WL 158551, at \*3. Ms. Schlansky's assertions that plaintiff violated the terms of the license agreement are therefore improper and inadmissible.

### **Conclusion**

The Schlansky Report offers nothing more than unsubstantiated, speculative assertions, all without any objective methodology, and proffers legal conclusions based on incomplete information that would serve to unfairly prejudice plaintiffs and mislead the jury. This Court's gatekeeping function under Rule 702 and *Daubert* requires exclusion of such unreliable and prejudicial testimony. Accordingly, plaintiffs respectfully request that the Court grant this motion to exclude defendant's expert witness Beth Schlansky.

Dated: New York, New York  
August 22, 2008

Respectfully submitted,

K&L Gates LLP

By: 

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# **EXHIBIT A**

IRA DANIEL TOKAYER, ESQ. (IT-4734)  
Attorney for Defendant  
42 West 38<sup>th</sup> Street, Suite 802  
New York, New York 10018  
(212) 695-5250

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CERVECERIA MODELO, S.A. DE C.V. : 07 CV 7998 (HB)  
and MARCUS MODELO S.A. DE C.V., :  
 :  
Plaintiffs, :  
 :  
-against- : EXPERT REPORT  
 :  
USPA ACCESSORIES LLC d/b/a :  
CONCEPT ONE ACCESSORIES, :  
 :  
Defendant. :  
-----x

PLEASE TAKE NOTICE that pursuant to Fed. R. Civ. P.  
26(a)(2), defendant submit the following Report of Beth  
Schlansky, an expert witness who may testify at trial:

OPINIONS AND CONCLUSIONS

1. Qualifications and Publications

My name is Beth Schlansky. I am a self-employed  
licensing consultant. For over thirty years I have worked in the  
retail and licensing fields, with experience on both the licensor  
and licensee side.

My experience and qualifications are set forth in the  
attached resume (Ex. A). I have also attached a list of my  
publications (Ex. B). I have not testified as an expert at trial  
or by deposition in the preceding four years.

2. Basis for Conclusions

My opinions are based upon my training and experience, my review and analysis of documents produced and/or made available and testimony developed in the course of this litigation and my visit to the offices of Concept One. I am informed that discovery is ongoing and I reserve the right to revise my opinions and conclusions if relevant additional information becomes available.

3. Opinions and Conclusions

- A. Based on my knowledge of Concept One's reputation in the industry, the licenses I observed Concept One has, the retailer stores in which I have seen Concept One's products, and my review and observations of Concept One's products, Concept One is a leading licensee with significant experience and expertise in the marketing, production and distribution of quality apparel products.
- B. Concept One possesses a valuable roster of licenses, including brand licenses with some of the largest companies in America, such as Major League Baseball, Budweiser, Levi Strauss, McDonald's, Pepsi, Chevrolet and others.
- C. Concept One is a leading distributor to the largest retailers in the United States including Walmart, K-



Mart, JCPenny, Target, Macy's and Spencer Gifts.

- D. Concept One would not have obtained such valuable licenses and retail relationships unless it had a proven track record for experience and expertise in the production and marketing of quality products.
- E. Licensing is a multi-billion dollar industry. It works because of the benefits licensing affords to the licensor, licensee and retailer.
- F. The benefits to the licensor are that, without the need to make a further investment in its property, it receives:
- increased exposure to and awareness of its property;
  - the extension of its property into a variety of products and markets in which it does not otherwise have an expertise; and
  - revenues through royalties; among other things.
- G. The benefits to the licensee of a licensing arrangement is increased sales of products, among other things.
- H. Based on my experience as a licensee and licensing agent, among other things, it is my opinion that to ensure a successful license arrangement which is beneficial to both licensee and licensor, a licensee must make substantial investment in:

- designers and developers of product;
- an experienced sales force;
- administrative personnel;
- a showroom;
- trade shows;
- manufacturing, warehousing and shipping capabilities;
- information systems; and
- communications systems; among other things.

- I. Based on the quantity of skus (or styles) submitted by Concept One in 2007 and previously, I conclude that Concept One has made a significant investment in connection with its license arrangement with the licensor of the Corona brand.
- J. It is customary and expected in the licensing industry that a licensor not unfairly interfere with a licensee's efforts to develop, market, manufacture, sell and distribute products under a license arrangement.
- K. Such interference can prevent a licensee from recouping its investment and harm a licensee's relationship with its retail customers who count on the licensee to meet their sales and inventory plans, among other things.
- M. In the licensing industry, the approval process is not

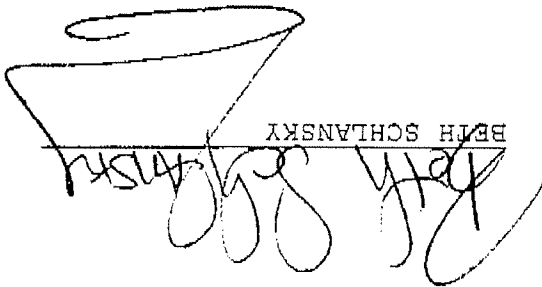
and should not be used to impede the ability of the licensee to realize the benefits of its license agreement, even if the contract provides that approval shall be in the absolute discretion of the licensor.

- N. If the licensor of the Corona brand failed to approve any Concept One's designs in the period February through March 23, 2007; failed to approve the overwhelming majority of other designs submitted by Concept One after March 23, 2007; rejected many of Concept One's designs without providing any reason to Concept One; rejected Concept One's designs based upon standards which were applied in violation of the license agreement which provides, among other things, that any changes to licensor standards and specifications shall become effective thirty days after written notice to licensee; and failed to fully review any designs after March 31, 2007; among other things, then the licensor of the Corona brand unfairly impeded the ability of Concept One to realize the benefits of its license agreement.
- O. Such interference with Concept One's efforts to develop, manufacture, sell and distribute products would have prevented Concept One from recouping its investment and affected Concept One's relationship with

its retail customers.

- P. The Corona-branded designs submitted by Concept One in 2007 were quality designs, not inferior in design to other Corona-branded designs previously approved by the licensor of the Corona brand.
- Q. The Corona-branded products produced by Concept One for sale in 2007 were quality products, not inferior in design, material or construction to other Corona-branded products previously approved by the licensor of the Corona brand.
- R. The designs and products designated BACO 8080, 8075, 7084 and 7127 were quality designs which conformed to the quality standards set forth in the parties' licensing agreement and the Policies and Procedures Manual.
- S. The designs and products designated BACO 8080, 8075, 7084 and 7127 were in no way inferior to flip-flop designs purportedly submitted by others, including Bioworld, in 2007.
- T. The failure to approve a 2007 design on the basis that it may be sold in 2008 pursuant to the contract's sell-off period is in direct violation of the terms of Concept One's license agreement with the licensor of the Corona brand.

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BETH SCHLANSKY  


Dated: New York, New York  
August 18, 2008

# **EXHIBIT B**

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1 ROUGH TRANSCRIPT -- DO NOT QUOTE

2 MR. SAUNDERS: Let's mark this.

3 (Plaintiff's Exhibit 1, subpoena,  
4 was marked for identification, as of this  
5 date.)

6 B E T H S C H L A N S K Y, called as a  
7 witness, having been duly sworn by a  
8 Notary Public, was examined and testified  
9 as follows:

10 EXAMINATION BY

11 MR. SAUNDERS:

12 Q. Please state your name and address  
13 for the record.

14 A. Beth Schlansky, at 446 East  
15 86th Street, New York, New York 10028.

16 Q. Good afternoon, Ms. Schlansky. Are  
17 you represented by counsel today personally?

18 A. No.

19 Q. No?

20 A. No.

21 Q. Okay. I would like to show you  
22 what's been marked as Exhibit 1 and ask you if  
23 you've seen that before today?

24 (Witness looks at exhibit.)

25 A. Yes.

□

5

1 ROUGH TRANSCRIPT -- DO NOT QUOTE

2 Q. Do you recall when you first saw it?

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24 at that aspect of this.

25 Q. Do you recall approximately what

□

12

1 ROUGH TRANSCRIPT -- DO NOT QUOTE

2 month that was?

3 A. Probably -- I'm going to take a  
4 guess -- February, March, in that time period.  
5 End of February, March. I'm taking a guess.

6 Q. And you said that you had known Sam  
7 from --

8 A. The industry.

9 Q. -- the industry.  
10 was that from your experience at  
11 Spencer's?

12 A. It was more as my independent  
13 business.

14 Q. So -- I'm sorry, go ahead.

15 A. It's more recent than it is back in  
16 Spencer days.

17 Q. So let me ask you a different  
18 question then. When did you first meet  
19 Mr. Hafif?

20 A. Probably at a trade show as I was  
21 working his booth with my retail client.

22 Q. And how long ago was that  
23 approximately?

24 A. Within the last two years.

25 Q. Do you recall what trade show it



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□

13

1 ROUGH TRANSCRIPT -- DO NOT QUOTE

2 was?

3 A. Probably Magic. which is held in  
4 Vegas.

5 Q. That's the big one in the industry?

6 A. That's the one that's happening next  
7 week.

8 Q. And when you say working did you say  
9 working his booth is that what you said?

10 A. Yes, working his booth that means I  
11 was there with my retail client reviewing his  
12 line.

13 Q. So who was your retail client?

14 A. My retail client is Trans world  
15 Entertainment.

16 Q. And what is Trans world  
17 Entertainment?

18 A. Trans world Entertainment has 800  
19 stores, they are retailers who are in the music  
20 entertainment business and I consult for them in  
21 their license product area which includes  
22 wearables and collectibles.

23 Q. And what type of consulting do you  
24 do, what is the nature of the consulting?

25 A. For Trans world?

□

14

1 ROUGH TRANSCRIPT -- DO NOT QUOTE

2 Q. Yes.

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3 A. I am in constant communication with  
4 them on a daily basis. I represent them in  
5 discussions with licensors and licensing agents  
6 I help them strategize their business, I advise  
7 them on opportunities whether they be licenses  
8 or manufacturers that I feel are appropriate for  
9 their line of business.

10 Q. Okay. And did you say they're a  
11 retailer?

12 A. Yes. 800 stores.

13 Q. 800 stores, under that name or what  
14 are the names of the stores?

15 A. No, they brand their stores FYE and  
16 Suncoast.

17 Q. FYE and Sunkist?

18 A. Suncoast, S-U-N coast.

19 Q. Okay. And are they in a particular  
20 region of the country?

21 A. Throughout the United States.

22 Q. Are they in the northeast at all?

23 A. Yes.

24 (Discussion off the record.)

25 BY MR. SAUNDERS:

□

15

1 ROUGH TRANSCRIPT -- DO NOT QUOTE

2 Q. So when did you next did you have  
3 another contact with Mr. Hafif after the --

4 A. After the agreement with financials  
5 I then started to work with Mr. Tokayer as my  
6 primary contact.

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7 his booth.  
8 Q. So your retail client, are they a  
9 customer of Concept One?  
10 A. Yes.  
11 Q. How many products do they buy from  
12 Concept One roughly?  
13 A. I don't know.  
14 Q. Is it a large quantity?  
15 A. I don't know the number.  
16 Q. You don't, okay. What types of  
17 products do they buy?  
18 A. Hats, flip flops, perhaps bags I'm  
19 not quite sure about bags.  
20 Q. And are these licensed goods?  
21 A. Yes.  
22 Q. Can you give examples of what some  
23 of the licenses that your client buys from  
24 Concept One?  
25 A. I wouldn't be able to list all of

□

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1 ROUGH TRANSCRIPT -- DO NOT QUOTE  
2 them.  
3 Q. No, I mean just examples?  
4 A. Again I didn't I am not prepared to  
5 give you the full list and so it's not in my  
6 expert witness report, so.  
7 Q. But your client which is -- is it  
8 Trans World Entertainment?  
9 A. Trans world Entertainment.

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10 Q. Your client is a customer of  
11 Concept One?  
12 A. Yes.  
13 Q. And do you know how long they've  
14 been a customer of Concept One?  
15 A. A couple of years.  
16 Q. What other interactions have you had  
17 with Mr. Hafif since the Magic show of two years  
18 ago?  
19 A. What do you mean interactions.  
20 Q. Have you dealt with Mr. Hafif in any  
21 way since then?  
22 A. Dealt with him what do you mean  
23 dealt with him.  
24 Q. Either in business or personally?  
25 A. No. Trade show contact.

□

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1 ROUGH TRANSCRIPT -- DO NOT QUOTE  
2 Q. Trade show, okay. Have you done any  
3 work for Concept One?  
4 A. No other than -- only writing the  
5 expert witness report.  
6 Q. Do you know anyone else at  
7 Concept One besides Mr. Hafif?  
8 A. I know some of his staff but only  
9 through trade show contact.  
10 Q. I see, okay. Do you consider him  
11 a -- do you consider Mr. Hafif a personal friend  
12 or a business client?  
13 A. Not a personal friend, a business  
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14 associate.

15 Q. All right. Now, you say at some  
16 point you went and visited Concept One's show  
17 room here in New York, is that right?

18 A. Yes.

19 Q. And what was the purpose of that  
20 visit?

21 A. To look at merchandise. To look at  
22 Corona merchandise.

23 Q. Right. And did you look at  
24 merchandise?

25 A. Yes.

□

45

1 ROUGH TRANSCRIPT -- DO NOT QUOTE

2 Q. what merchandise did you look at?

3 A. I looked at hats and I looked at  
4 flip flops and a few bags.

5 Q. And who decided what products you  
6 would look at?

7 A. Concept One displayed product from  
8 that -- the period that we're talking about and  
9 the prior year, approved product.

10 Q. So Concept One chose the products  
11 that you would look at is that correct?

12 A. Yes.

13 Q. And do you recall approximately how  
14 many products you looked at?

15 A. I am going to take a guess and say  
16 between 125 to 150 products.

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17 Q. Actual physical products?  
18 A. Actual physical products.  
19 Q. And then what did you do -- when you  
20 looked at these products what did you do next?  
21 A. I don't understand the question.  
22 Q. Did you make any notes or did you  
23 just look at them?  
24 A. I slowly examined each product.  
25 Q. And so you didn't make any notes?

□

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1 ROUGH TRANSCRIPT -- DO NOT QUOTE  
2 A. No.  
3 Q. And how long did this process take?  
4 A. I don't know.  
5 Q. Were you there for hours, the full  
6 day?  
7 A. I would say probably -- no it wasn't  
8 a full day, no. I don't recall how long.  
9 Q. And do you recall having -- was  
10 Mr. Hafif there when you did this analysis?  
11 A. He was in another room. He was not  
12 in the room with me. He might have been at the  
13 front end and at the back end but when I was  
14 going through he was not there.  
15 Q. Was Mr. Tokayer there?  
16 A. He too left the room.  
17 Q. Meaning he was physically there in  
18 the office?  
19 A. He was in the office, yeah.  
20 Q. And then so what did you do, you

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21 visually examined the products is that what you  
22 did?

23 A. Yes.

24 Q. And then did you do anything else?

25 A. No.

□

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1 ROUGH TRANSCRIPT -- DO NOT QUOTE

2 Q. And when you finished visually  
3 reviewing the products did you then talk to  
4 anyone before you left?

5 A. A few minutes with Mr. Tokayer and a  
6 few minutes with Mr. Hafif. Just a few minutes.

7 Q. And in those few minutes what was  
8 the gist of what you said?

9 A. I commented on the good quality, I  
10 commented on the excellent styling, and I  
11 commented on the excellent way that the Corona  
12 trademarks were utilized on the design of the  
13 product.

14 Q. And let's take the last one first.  
15 The excellent way that the Corona trademarks  
16 were utilized on the product --

17 A. Mm-hmm.

18 Q. -- what did you base that on?

19 A. My experience.

20 Q. Your personal experience?

21 A. Yes.

22 Q. Did you look at anything in writing  
23 when you made that determination?

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24 A. Looked at anything in writing, what  
25 does that mean?

□

48

1 ROUGH TRANSCRIPT -- DO NOT QUOTE

2 Q. Any document, anything that  
3 references the Corona trademarks at all?

4 A. As supplied by who? I don't  
5 understand your question.

6 Q. I'm just saying you made some  
7 determination as to whether the Corona  
8 trademarks were displayed properly?

9 A. Yes, from a design point of view.

10 Q. From a design point of view?

11 A. And as well as the legal markings  
12 that are necessary.

13 Q. Right. And that's what I'm trying  
14 to get at. With respect to the legal markings  
15 that are necessary, are you saying you just know  
16 that or were you looking at something?

17 A. Well, remember, I had been given  
18 guidelines and I had been given submission forms  
19 prior.

20 Q. Exactly, that's what I'm getting at.

21 A. But I had been given that at another  
22 time.

23 Q. So you weren't looking at those  
24 guidelines that day?

25 A. No.



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24 that you want to clarify at this time?

25 A. No.

□

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1 ROUGH TRANSCRIPT -- DO NOT QUOTE

2 Q. Now, you actually answered my next  
3 question before the break you said that this is  
4 your first time as an expert in a litigation is  
5 that right?

6 A. Yes.

7 Q. And have you ever been in a  
8 deposition before?

9 A. No.

10 Q. Lot of firsts.

11 And am I correct that you are not a  
12 lawyer?

13 A. I am not a lawyer.

14 Q. Have you taken any courses in  
15 contract law?

16 A. No.

17 Q. How about contract interpretation?

18 A. No.

19 Q. Have you taken any courses that deal  
20 with license agreements in any way?

21 A. I have attended industry seminars.

22 Q. Okay. What types of seminars?

23 A. Seminars that are given by industry  
24 experts on various subjects that are approved by  
25 LIMA L-I-M-A which is the licensing industry

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14 A. No, I don't think that I can take my  
15 thought pattern and put it into those two  
16 compartments.

17 Q. Okay. Do you recall what it is you  
18 changed between the first version and the  
19 second?

20 A. Section 3A needed further  
21 clarification.

22 Q. Was that your opinion?

23 A. Yes.

24 Q. Or Mr. Tokayer's?

25 A. My opinion.

□

72

1 ROUGH TRANSCRIPT -- DO NOT QUOTE

2 Q. Your opinion, why did it need  
3 further clarification?

4 A. I wanted to clarify why I felt  
5 Concept One is a leading licensee.

6 Q. Now, when you drafted the first  
7 report going back to the first report when you  
8 drafted it did you then show it to Mr. Tokayer  
9 for comment?

10 A. Yes.

11 Q. And did he have comments?

12 A. I don't recall all that he said or  
13 not. I don't recall.

14 Q. Okay but it was just a yes or no  
15 question did he have comments?

16 A. Yes.

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17 Q. He did, okay. And do you recall  
18 whether he gave you those comments in some way  
19 whether verbally or in writing?

20 A. Probably verbally.

21 Q. And what did you do with those  
22 comments?

23 A. Thought about them.

24 Q. Right. And then what?

25 A. Sometimes acted, sometimes didn't.

□

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1 ROUGH TRANSCRIPT -- DO NOT QUOTE

2 Q. And how many times did that process  
3 occur?

4 A. I don't recall.

5 Q. Was it more than once?

6 A. Possibly.

7 Q. Possibly?

8 A. Possibly.

9 Q. I'm just talking about the first  
10 report now?

11 A. Possibly.

12 Q. So Mr. Gerber gave you --

13 MR. GERBER: Tokayer.

14 Q. I'm sorry, Mr. Tokayer gave you  
15 verbal comments and then you thought about them,  
16 and in some instances you made changes based on  
17 those comments?

18 A. Sometimes.

19 Q. If you looked at the report can you  
20 tell me what changes you made based on

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21 Mr. Tokayer's comments?

22 A. No, I couldn't.

23 Q. So other than incorporating some of  
24 Mr. Tokayer's comments into the first version of  
25 the report did you write the entire report

□

74

1 ROUGH TRANSCRIPT -- DO NOT QUOTE

2 yourself?

3 A. I wrote the report.

4 Q. Okay that's what I'm trying to get  
5 at did anyone else assist you anyone at your  
6 company --

7 A. No, no.

8 Q. Are there others at your company?

9 A. No. My dog. Strike that.

10 Q. Now when the final report was done  
11 but not signed, did you again show it to  
12 Mr. Tokayer?

13 A. Of course.

14 Q. And did he come back with comments  
15 at that point?

16 A. I don't recall.

17 Q. And just to be clear for the record  
18 you made one visit to Concept One to look at  
19 products, is that right?

20 A. I made two. One was to look at '06,  
21 '07, and the second visit was to look at flip  
22 flops that had been submitted and those were the  
23 two visits.

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□

76

1 ROUGH TRANSCRIPT -- DO NOT QUOTE

2 for '06?

3 A. All of the samples were different  
4 that I saw. I saw -- I don't think there were  
5 duplications. I saw a hundred-plus samples.

6 Q. So that's what I'm trying to get at.  
7 when you were comparing the '06 to the '07  
8 products were you looking for the two things we  
9 discussed earlier, just the quality of the  
10 product itself and the display of the trademark?

11 A. Yes.

12 Q. Anything else?

13 A. No.

14 Q. And with respect to all of the '06  
15 products did you find any products that you  
16 didn't think were up to the quality standards  
17 that you were applying?

18 A. '06?

19 Q. Yes.

20 A. No, '06 products looked great.

21 Q. All of them, every single one?

22 A. Yeah, they did.

23 Q. And same question for '07?

24 A. '06 and '07 both looked great.

25 Q. So in other words, out of all the

□

77

1 ROUGH TRANSCRIPT -- DO NOT QUOTE

2 products that you reviewed, which I think you

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21 case.

22 Q. And how does the word "if" do that?

23 A. In my interpretation of putting if,  
24 it was to not refer directly to the case but to  
25 say you know to talk about it in a more abstract

□

164

1 ROUGH TRANSCRIPT -- DO NOT QUOTE

2 way, and that's why I did it.

3 Q. Now, did anyone see this March 23rd,  
4 2007 date?

5 A. Mm-hmm.

6 Q. Again, who gave you that date?

7 A. Ira Tokayer. Ira Tokayer told me  
8 about the time period that encompassed all of  
9 the submissions in the period that I was looking  
10 at.

11 Q. Do you have any knowledge whether in  
12 the following week that Concept One received a  
13 number of approvals, do you have knowledge of  
14 that from Corona?

15 A. I know there were some approvals but  
16 I don't know the extent of them.

17 Q. You do know that?

18 A. I know there were some that were  
19 approved but I know it was a small amount I was  
20 told there was a small amount that were  
21 approved.

22 Q. But Ira gave you the date?

23 A. Yes.

24 Q. Of March 21st, 2007? 204995-082108-ROUGH.txt

25 A. Yes, Ira Tokayer. He had given

□

165

1 ROUGH TRANSCRIPT -- DO NOT QUOTE

2 me -- I asked him what was the period of focus,  
3 and that was the period that I was given.

4 Q. Did he tell you why that was the  
5 cutoff date?

6 A. No, I do not know.

7 Q. Did you ask him why that was the  
8 cutoff date?

9 A. No, I did not ask him.

10 Q. Now, the next sentence, failed to  
11 approve the overwhelming majority of other  
12 designs submitted by Concept One after  
13 March 23rd, 2007.

14 Do you know that to be true or is  
15 that something you were told?

16 A. That was something I was told.

17 Q. So you didn't do any independent  
18 investigation to see whether that was true?

19 A. No, I did not go through the  
20 submissions as I had done through that period  
21 prior.

22 Q. Rejected many of Concept One's  
23 designs without providing any reason to  
24 Concept One?

25 A. Yes. On that chart we were looking

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7 products would have prevented Concept One from  
8 recouping its investment and affected  
9 Concept One's relationship with its retail  
10 customers?

11 A. Yes.

12 Q. So you conclude that if everything  
13 in paragraph N happened, that that constitutes  
14 an interference with Concept One's efforts, is  
15 that what you are saying?

16 A. Yes, that's is what I'm saying.

17 Q. And going back up to paragraph N,  
18 you state and fail to fully review any designs  
19 after March 31st, 2007 do you see that?

20 A. Yes and that's what I was informed.

21 Q. Okay. So someone told you that?

22 A. Yes.

23 Q. Who told you that?

24 A. Ira Tokayer.

25 Q. Paragraph P, now is paragraph P

□

169

1 ROUGH TRANSCRIPT -- DO NOT QUOTE

2 based solely upon your review of the designs?

3 A. In Concept One's showroom.

4 Q. Right. So you didn't conduct any  
5 research to determine whether others would agree  
6 with your review?

7 A. I was in their showroom examining  
8 products. And section P is based upon that.

9 Q. Right. Okay. And so aside from



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10 section P, the question is did you conduct any  
11 research such as a blind study with others who  
12 went in, looked at the products without knowing  
13 the purpose of looking at the products, and then  
14 reporting back to you, did you do that?

15 A. No, because in my experience I have  
16 the knowledge to see quality and understand  
17 quality when I see it.

18 Q. Okay. But are you familiar with  
19 research and double blind research techniques,  
20 are you familiar with that?

21 A. No, but I'm familiar with working  
22 with retailers to choose quality products that  
23 can sell at retail without damage problems.

24 Q. But you didn't utilize any neutral  
25 people who had no idea of what the purpose was

□

170

1 ROUGH TRANSCRIPT -- DO NOT QUOTE

2 of the inspection to go look at the products and  
3 then report to you, is that correct?

4 A. No, I did not.

5 Q. And paragraph Q, that's based on  
6 your visit to Concept One and comparison of the  
7 goods that Concept One showed you, is that  
8 right?

9 A. Yes.

10 Q. Is it based on anything else?

11 A. It's based upon my experience of  
12 recognizing quality manufactured goods and my  
13 experience of picking the right products for

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14 retailers.

15 Q. Okay. And other than that, your  
16 experience and your personal review is paragraph  
17 Q based on anything else?

18 A. No.

19 Q. Is it based on any objective  
20 research?

21 A. No.

22 Q. Now let's move to paragraph R why  
23 did you include paragraph R?

24 A. Mr. Tokayer had asked me to form an  
25 opinion about the flip flops that are the style

□

171

1 ROUGH TRANSCRIPT -- DO NOT QUOTE

2 numbers that you see there, 8080, 8075, 7084,  
3 7127. Mr. Tokayer asked me to form a separate  
4 opinion on these flip flops.

5 Q. And he gave you just these four  
6 design SKUs?

7 A. Yes.

8 Q. What did you do in order to form an  
9 opinion?

10 A. I examined them.

11 Q. These were designs or products?

12 A. Samples.

13 Q. But physical products?

14 A. Physical.

15 Q. And you examined them and then found  
16 them to be quality designs which conformed to

# **EXHIBIT C**

**STATUS HISTORY**

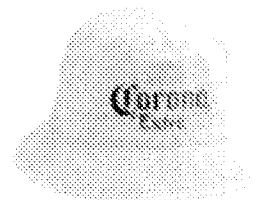
Status	Date
Submitted	03/12/2007
Creative Approved	03/28/2007

**NOTES/INSTRUCTIONS**

1. Update production and price information [click here](#).
2. Print tracking form (update prod. info. first)
3. Send sample, with tracking form

**DETAILS**

Submitted	03/12/2007
Company	CONCEPT ONE ACCESSORIES
Posted By	Tara La Rosa
Ref #	CO2100
Description	co2100 - twill bucket
Brand	Corona Extra
Product Type	Image
Core Image	Logo Elements
Item Name	Headwear
Color	na
Slogan	N/A
Priority	Med
Sample Required	Yes
Creative Status	Approved
Sample Status	Pending

**IMAGE(S)****CONTACT HISTORY**

None Found

**RELATED RECORDS**

None Found

**MODELO 00574**

**STATUS HISTORY**

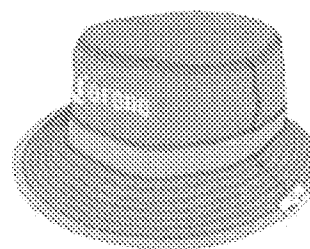
Status	Date
Submitted	03/14/2007
Creative Approved	03/28/2007

**NOTES/INSTRUCTIONS**

1. Update production and price information [click here](#).
2. Print tracking form (update prod. info. first)
3. Send sample, with tracking form

**DETAILS**

<b>Submitted</b>	03/14/2007
<b>Company</b>	CONCEPT ONE ACCESSORIES
<b>Posted By</b>	Tara La Rosa
<b>Ref #</b>	CO2044
<b>Description</b>	co2044 - crusher
<b>Brand</b>	Corona Extra
<b>Product Type</b>	Image
<b>Core Image</b>	Logo Elements
<b>Item Name</b>	Headwear
<b>Color</b>	n
<b>Slogan</b>	N/A
<b>Priority</b>	Med
<b>Sample Required</b>	Yes
<b>Creative Status</b>	Approved
<b>Sample Status</b>	Pending

**IMAGE(S)****CONTACT HISTORY**

None Found

**RELATED RECORDS**

None Found

**MODELO 00529**

**STATUS HISTORY**

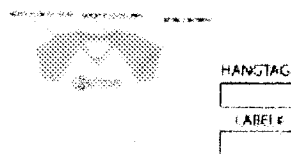
Status	Date
Submitted	02/28/2007
Creative Approved	03/28/2007

**NOTES/INSTRUCTIONS**

1. Update production and price information [click here.](#)
2. Print tracking form (update prod. info. first)
3. Send sample, with tracking form

**DETAILS**

Submitted	02/28/2007
Company	CONCEPT ONE ACCESSORIES
Posted By	Tara La Rosa
Ref #	PRINTED RAGLAN T-SHIRT
Description	CO8002-TSHIRT
Brand	Corona Extra
Product Type	Image
Core Image	Logo Elements
Item Name	T-Shirts
Color	White
Slogan	N/A
Priority	Med
Sample Required	Yes
Creative Status	Approved
Sample Status	Pending

**IMAGE(S)****CONTACT HISTORY**

None Found

**RELATED RECORDS**

None Found

**MODELO 00614**

**STATUS HISTORY**

Status	Date
Submitted	03/02/2007
Creative Approved	03/28/2007

**NOTES/INSTRUCTIONS**

1. Update production and price information [click here](#).
2. Print tracking form (update prod. info. first)
3. Send sample, with tracking form

**DETAILS**

Submitted	03/02/2007
Company	CONCEPT ONE ACCESSORIES
Posted By	Tara La Rosa
Ref #	Reversible Steep Knit cap
Description	73-18-7870-Knit Cap
Brand	Corona Extra
Product Type	Image
Core Image	Crown
Item Name	Headwear
Color	Blue
Slogan	N/A
Priority	Med
Sample Required	Yes
Creative Status	Approved
Sample Status	Pending

**IMAGE(S)****CONTACT HISTORY**

None Found

**RELATED RECORDS**

None Found

**MODELO 00606**

**STATUS HISTORY**

Status	Date
Submitted	03/02/2007
Creative Approved	03/28/2007

**NOTES/INSTRUCTIONS**

1. Update production and price information [click here.](#)
2. Print tracking form (update prod. info. first)
3. Send sample, with tracking form

**DETAILS**

Submitted	03/02/2007
Company	CONCEPT ONE ACCESSORIES
Posted By	Tara La Rosa
Ref #	Reversible Tipd Knit cap
Description	73-18-7871-Knit Cap
Brand	Corona Extra
Product Type	Image
Core Image	crown
Item Name	Headwear
Color	Pink
Slogan	N/A
Priority	Med
Sample Required	Yes
Creative Status	Approved
Sample Status	Pending

**IMAGE(S)**

LANGUAGES  
COTD03  
ASK  
COTD03

**CONTACT HISTORY**

None Found

**RELATED RECORDS**

None Found

**MODELO 00605**